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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/659,112	09/11/2000	Arthur Cameron Wilson	9D-RG-19254	4522

7590

07/08/2003

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EXAMINER

COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3743

11

DATE MAILED: 07/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/659,112	Applicant(s) WILSON, ARTHUR CAMERON	
	Examiner Josiah C. Cocks	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on amendment filed 4/24/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-12 and 14-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-12 and 14-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 January 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed 4/24/03 is acknowledged.

Drawings

2. The formal drawings filed 1/2/03 are accepted by the examiner.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 and 3-8 are rejected under 35 U.S.C. 102(b) as being anticipated by *Koziol* (US # 4,848,217).

Koziol discloses in Figures 1-5 an oven rack substantially as described in applicant's claims 1 and 3-8 including a first portion (first downward sloping section of V-shaped grid) and a second portion (second upward section of V-shaped grid). While not expressly disclosed as extending obliquely, the second portion of the generally V-shaped construction (see col. 1, lines 55) is regarded by the examiner to be the equivalent of "extending obliquely" as recited in applicant's claim 1. *Koziol* further discloses a support system including at least a first leg (23) and a second leg (17) rearwardly displaced from the first leg wherein the first and second legs

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extend a substantially equal distance from the first portion (see Fig. 1). *Koziol* also discloses multiple members (13) that extend from the first side of the first portion. These members (13) would function to allow a user to grasp the rack and regarded by the examiner as handles. *Koziol* also discloses that the first portion includes a plurality of first rods (12) and second rods (15 and 16) attached substantially perpendicularly to the first rods wherein the first and second rods are substantially co-planar on the first portion of the V-shape of the grid.

In regard to claim 8 and the recitation that the rack is “configured to be used as a trivet on a countertop,” is simply a statement of intended use and given no patentable weight. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case, the rack of *Koziol* would function as a trivet.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 9-12 and 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Koziol* (Us # 4,848,217) as applied above and further in view of *Carpenter et al.* (US # 3,266,484).

In regard claims 9-12 and 14-19, while *Koziol* does not expressly disclose an oven with a cooking chamber comprising a bottom surface and at least three sides, *Koziol* does clearly indicate that the cooking rack is intended to be used in an oven (see Abstract) and would placed on the bottom surface thereof. It is well known in the art that ovens conventionally include cooking chambers with a bottom surface and at least three sides. *Carpenter et al.* is cited to show such conventional oven structure including a bottom surface, at least three sides, and a door hingedly attached to the cooking chamber (see Fig. 1). Placing the oven rack of *Koziol* in a conventional oven, such as that of *Carpenter et al.*, would result in an oven rack that is configured to be stabilized against the oven door and fit within the combustion chamber. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made that the cooking rack of *Koziol* would be placed on the bottom surface of an oven, such as that disclosed in *Carpenter et al.*, for the purpose of supporting items to be cooked in the oven.

In regard to claim 19 and the recitation that the rack is “configured to be used as a trivet on a countertop,” is simply a statement of intended use and given no patentable weight. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use,

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then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case, the rack of *Koziol* would function as a trivet.

Response to Arguments

7. Applicant's arguments filed 4/24/03 have been fully considered but they are not persuasive. Applicant argues on pages 5-6 that *Koziol* does not show an oven rack having first and second legs as claimed by applicant. However, as noted in item 4 above, *Koziol* is regarded by the examiner to disclose an oven rack including all the limitations claimed by applicant.

Applicant also argues on pages 4-6 of the response that the cited art does not show an oven rack having first and second portions in combination with an oven having a bottom surface and at least three sides. Such an argument is not well taken. As noted in items 4 and 6 above, *Koziol* clearly teaches an oven rack as claimed by applicant for use in a conventional oven. *Carpenter et al.* is cited merely to show that a conventional oven is well understood in the art to include a bottom surface and at least three sides.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. *Irwin* and *Romero* are included to further show the state of the art concerning rack structure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (703) 305-0450. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett, can be reached at (703) 308-0101. The fax phone numbers for this Group are (703) 308-7764 for regular communications and (703) 305-3463 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc
June 27, 2003


JOSIAH COCKS
PATENT EXAMINER
ART UNIT 3743